SUPREME COURT OF APPEALS OF VIRGINIA.

PETERS v. LYNCHBURG, ETC., LIGHT CO.

June 11, 1908.

[61 S. E. 745.]

1. Negligence—Res Ipsa Loquitur—Application of Doctrine.—The doctrine of res ipsa loquitur, that, where the thing causing the injury complained of is shown to be under the management of defendant or his servant and the occurrence is such that in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by defendant, that the occurrence arose from want of care, rests on the assumption that the thing is under the exclusive management of defendant, and the evidence of the true cause of the accident is accessible to him and inaccessible to the person injured, and it has no application where the accident is due to a defective appliance under the management of plaintiff, or to a case involving divided responsibility, where the unexplained accident may have been attributable to one of several causes for some of which defendant is not responsible.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 37, Negligence, §§ 217-234.]

2. Electricity—Injuries Incident to Use—Negligence—Evidence.—An owner wired his house with electricity under the inspection of the electrician of the city. The wiring and electrical equipment belonged to the owner. In turning off an incandescent light in the house, he received an electric shock, and sued the electric company furnishing electricity. Two experts agreed that excessive voltage could only have been transmitted into the building by one of two means—either by the transformer being out of order, or by a crossing of the secondary wire with some other wire of higher voltage—neither of which was found to exist, and they expressed the opinion that the accident was due to the circumstance that the brass on the light bulb protruded from the socket in such a way that, when the light was on, the upper end of the brass was in contact with the wires in the socket. Their theory was sustained by other evidence. Held not to establish actionable negligence; the doctrine of res ipsa loquitur being inapplicable.

Error to Corporation Court of Lynchburg.

Action by one Peters against the Lynchburg, etc., Light Company. There was a judgment for defendant on a demurrer to the evidence, and plaintiff brings error. Affirmed.

Don P. Halsey, for plaintiff in error.

Horsley, Kemp & Easley, for defendant in error.

WHITTLE, J. The declaration in this case, after first setting forth that the defendant in an electric light company located in the city of Lynchburg and engaged in the business of supplying electricity to the citizens of that city for lighting purposes, alleges (1) that the defendant negligently suffered an excessive current of electricity to remain upon its wires leading into the plaintiff's dwelling; (2) that it negligently permitted its secondary wire, used for conducting electricity into the building, to become crossed with its other wires, thus carrying a dangerous voltage of electricity therein; and (3) that it negligently failed to keep in proper condition a suitable transformer to reduce the voltage of electricity carried by its primary or high tension wires, so as to transmit a safe current to its secondary or low tension wires leading into the dwelling. And, as the proximate result of these several acts of negligence, it is charged that the plaintiff, in turning off an incandescent light in his kitchen, received a shock from the overcharged wire, which occasioned the injury for which he demands damages of the defendant.

The trial court entered judgment for the defendant on a demurrer to the evidence, to which ruling the plaintiff brings error.

The defendant had neither ownership nor control of the electric appliances on the plaintiff's premises. The house was wired by the owner, under the inspection of the city electrician, and the wiring and electric equipment were his property. The two experts who examined the premises to discover the cause of the accident are agreed that excessive voltage could only have been transmitted into the building by one of two means—either by the transformer being out of order, or by a crossing of the secondary wire of higher voltage—neither of which conditions was found to exist. On the contrary, the testimony of both these experts (one introduced by the plaintiff and the other by the defendant) shows that, in their opinion, the accident was due to the circumstance that the brass on the light bulb protruded from the socket in such a way that, when the light was on, the upper end of the brass was in contact with the wires in the socket. Their theory is sustained by the incident that one of them (Kent, the plaintiff's witness), while holding the bulb in his hands, with part of his hand touching the protruding rim on top of the lamp, stepped on a piece of zinc under a range connected with the water tank and pipes running into the ground; and the short circuit thus formed caused the electricity to pass through his body into the ground. The shock was shown to be so severe that it burnt his finger, and he jerked loose and threw the lamp from him. In that connection it also appeared that the

plaintiff himself had taken the light bulb in question from another room and placed it in the kitchen socket, to which it was unsuited.

To sustain a recovery, the plaintiff relies chiefly on the doctrine of res ipsa loquitur, and calls special attention to the case of Alexander v. Nanticoke Light Co., 209 Pa. 571, 58 Atl. 1068, 67 L. R. A. 475. There is, however, obvious dissimilarity in the facts of two cases. In the outset the opinion in the Pennsylvania case states: "The premises of the appellant * * * were lighted by electricity. The electric light was furnished by the appellee, an electric light company. It had wired the store and cellar of the plaintiff, furnished the electric lamps, and made and maintained the connections. * * * He went into his cellar to show goods to a customer, and while handling, in the usual way, an ordinary incandescent light bulb, suspended from the ceiling by a flexible extension cord, was severely shocked and seriously injured. From the facts submitted, it appeared that, when he was shocked, the electric wires on his premises were charged with a higher voltage than they should have carried, but the cause of this was not shown to have been any specific negligence of the defendant." The court held, upon the foregoing premises, that the presumption was that the company was negligent.

The differentiating features between the Pennsylvania case and the case in judgment are the presence in the former case, and absence in the latter, of excessive voltage on the lighting wires; and the further fact that in the former case the light company wired the plaintiff's store and cellar, furnished the electric lamps, and made and maintained the connections, while in this case the wiring was done, and the electric outfit was owned, installed, and controlled, by the proprietor of the premises.

In the case of Scott v. London Dock Co., 3 H. & C. (Com. L. R. U. S. 134), Erle, C. J., with respect to the application of the doctrine of res ipsa loquitur, observes: "There must be some evidence of negligence. But when the thing is shown to be under the management of the defendant or his servants, and the occurrence is such that as in the ordinary course of things does not happen if those who have the management use the proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the occurrence arose from want of care."

The doctrine rests upon the assumption that the thing which causes the injury is under the exclusive management of the defendant, and the evidence of the true cause of the accident is accessible to the defendant and inaccessible to the person injured. Ross v. Double Shoals Cotton Mill, 140 N. C. 115, 52 S. E. 121,

1 L. R. A. (N. S.) 298; Greenleaf on Ev. (Wigmore) § 2509; 1 Shear. & Red. on Neg. § 59.

The decisions of this court accord with the foregoing principles.

In Richmond, etc., Co. *v.* Rubin, 102 Va. 809, 47 S. E. 834, the company suffered its trolley wire to sag and come in contact with the plaintiff's phone wire, and was held responsible for a fire traceable to that cause.

So, in Norfolk R. etc., Co. *v.* Spratley, 103 Va. 379, 49 S. E. 502, and Lynchburg Tel. Co. *v.* Booker, 103 Va. 594, 50 S. E. 148, the injuries, for the infliction of which the companies were held answerable in damages, were occasioned by broken wires owned and exclusively controlled by the defendants, and negligently left by them in or near the streets.

But the doctrine of res ipsa loquitur can have no application where the accident is due to a defective appliance under the management of the plaintiff; nor to a case involving divided responsibility, where an unexplained accident may have been attributable to one of several causes, for some of which the defendant is not responsible.

From the standpoint of a demurrer to the evidence, the plaintiff has failed to establish actionable negligence against the defendant; and the judgment of the trial court, which so holds, must be affirmed.

Affirmed.

Note.

The principal case holds that the doctrine of res ipsa loquitur can have no application where the accident is due to a defective appliance under the management of the plaintiff; nor to a case involving divided responsibility, where an unexplained accident may have been attributable to one of several causes, for some of which the defendant is not responsible.

No similar ruling seems ever to have been made in any other jurisdiction, though the correctness of the decision will be admitted by everyone. That a defendant should be held liable for an accident due to an agency over which he has no control would be too manifestly unjust to be allowed by a court of justice; besides, as the court said, "The doctrine rests upon the assumption that the thing which causes the injury is under the exclusive management of the defendant, and the evidence of the true cause of the accident is accessible to the defendant and inaccessible to the person injured." It seems incredible that any new doctrine could arise in the law of negligence at this late day, but this is certainly the first time the above ruling has been the grounds of decision in any case.